

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re:

BERNARD L. MADOFF INVESTMENT Adv.Pro.No.
SECURITIES LLC, 08-01789 (BRL)
Debtor.

-----x

IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff
Investment Securities LLC,
Plaintiff, Adv.Pro.No.
09-1182 (BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,
L.P., ARIEL FUND LTD., ASCOT
PARTNERS, L.P., GABRIEL CAPITAL
CORPORATION,

Defendants.

-----x

VIDEOTAPED DEPOSITION OF J. EZRA MERKIN,
as reported by Nancy C. Bendish, Certified Court
Reporter, RMR, CRR, and Notary Public of the
State of New York, at the offices of Baker
Hostetler, 45 Rockefeller Plaza, New York, New
York, on Tuesday, February 24, 2015, commencing
at 9:47 a.m.

Page 114	Page 116
<p>1 don't remember.</p> <p>2 In the basket days -- remember</p> <p>3 you're getting -- you've sold the call on the</p> <p>4 S & P 100, on an index that -- let's just --</p> <p>5 that's called the OEX. The process of</p> <p>6 exercising index options is very different than</p> <p>7 the process of exercising individual stock</p> <p>8 options. And as a generality we either rolled</p> <p>9 or got out and were not ever exercised against</p> <p>10 or assigned, which is what I think you're asking</p> <p>11 me.</p> <p>12 You're asking me about a short</p> <p>13 call. We were short the call. So the person</p> <p>14 who bought the call or the party that bought the</p> <p>15 call could have exercised it, which is your</p> <p>16 question.</p> <p>17 Q. Right.</p> <p>18 A. I just don't remember. But</p> <p>19 generally we rolled around things. Rolled as a</p> <p>20 term of art. I'm not describing a physical</p> <p>21 movement.</p> <p>22 Q. On the other side, your</p> <p>23 recollection again in Ascot, did anyone ever --</p> <p>24 A. So, we were long the puts. So</p> <p>25 it's only the entity that's long the option that</p>	<p>1 about not buying puts. Do you remember the</p> <p>2 first time you had that conversation?</p> <p>3 MR. STEINER: Not buying puts or</p> <p>4 about buying puts?</p> <p>5 MR. SHEEHAN: No, no.</p> <p>6 Q. Yeah, not buying puts.</p> <p>7 A. The question I answered was did</p> <p>8 you ever have a conversation with Mr. Madoff</p> <p>9 about buying puts.</p> <p>10 Q. Yes.</p> <p>11 A. Okay. And the answer to that is</p> <p>12 yes. Okay?</p> <p>13 Q. I thought I said not buying puts,</p> <p>14 but go ahead.</p> <p>15 A. The presence of the puts, the cost</p> <p>16 of the puts, puts cost money, puts are</p> <p>17 insurance.</p> <p>18 Q. Yes.</p> <p>19 A. Essentially it's an insurance</p> <p>20 concept because by buying it, by adjusting the</p> <p>21 strike down, you're taking a deductible. And</p> <p>22 insurance policies decline in cost as the</p> <p>23 deductible increases.</p> <p>24 So we had quite a number of</p> <p>25 conversations about where the puts should be</p>
Page 115	Page 117
<p>1 can exercise.</p> <p>2 Q. Right.</p> <p>3 A. So if it's anyone -- did anyone</p> <p>4 ever exercise is a different question.</p> <p>5 Q. Right.</p> <p>6 A. Because the only person that can</p> <p>7 exercise the put is us.</p> <p>8 Q. Yes.</p> <p>9 A. Is the owner of the put.</p> <p>10 Q. Did you ever do that?</p> <p>11 A. Don't remember.</p> <p>12 Q. Did there ever come a time when</p> <p>13 you discussed with Mr. Madoff why are we buying</p> <p>14 puts?</p> <p>15 A. Sure. All the time.</p> <p>16 Q. And what was that conversation?</p> <p>17 We didn't put the time on it and everything.</p> <p>18 We'll get back to the W's later. But just --</p> <p>19 A. We're gonna get back to the W's</p> <p>20 later?</p> <p>21 Q. The W's, who, what, where, when.</p> <p>22 A. Oh. I thought you were talking</p> <p>23 about a position. I didn't know what you meant.</p> <p>24 Q. I'm sorry. Let me be less glib</p> <p>25 here. I asked you if you had a conversation</p>	<p>1 struck, where does the band go, how out of the</p> <p>2 money should we strike the put in order</p> <p>3 simultaneously to change the performance of the</p> <p>4 deductible and either decrease the cost of it or</p> <p>5 increase the cost of it.</p> <p>6 The intention of the program all</p> <p>7 along was to be hedged. The hedge in the case</p> <p>8 of this program was achieved through the</p> <p>9 purchase of the put. Right?</p> <p>10 Q. I understand.</p> <p>11 A. The sell of the call helped</p> <p>12 finance the put and the sell of the call also</p> <p>13 did some other things, and certainly, certainly</p> <p>14 it limited the upside. But if you're long a</p> <p>15 call -- if you're long a stock and short a call,</p> <p>16 which is called the covered right in the options</p> <p>17 industry, you're partially hedged on the upside</p> <p>18 and you've reduced your cost, but you're not</p> <p>19 really hedged on the downside.</p> <p>20 Q. Yes.</p> <p>21 A. You will lose -- you won't lose</p> <p>22 the first movement down because your first loss</p> <p>23 will be covered to the extent that you pocketed</p> <p>24 something for the call. So if you bought a</p> <p>25 stock at 92 and you sold a 95 call at a dollar</p>

Page 146	Page 148
<p>1 A. No.</p> <p>2 Q. Why don't you take a look at it</p> <p>3 right now. It's going to take a little bit of</p> <p>4 time but I think it will be worthwhile, because</p> <p>5 we're going to refer to it.</p> <p>6 MR. STEINER: The one thing I</p> <p>7 noticed, the original interrogatory answers that</p> <p>8 these are supplementing would have had the</p> <p>9 questions that were being responded to and this</p> <p>10 just refers back to those questions.</p> <p>11 MR. SHEEHAN: Yes.</p> <p>12 MR. STEINER: So to the extent</p> <p>13 your questions embed in them references to 1,</p> <p>14 2 -- interrogatories 1, 2, 3, 7, 8, 9, 10, 11</p> <p>15 and 13, then perhaps we should make those</p> <p>16 available for the witness also. But to the</p> <p>17 extent your questions don't require that, you</p> <p>18 know, the answer is the answer.</p> <p>19 MR. SHEEHAN: I don't think it</p> <p>20 will, Neil, but if it comes up we'll certainly</p> <p>21 retrieve those.</p> <p>22 BY MR. SHEEHAN:</p> <p>23 Q. Directing your attention if I</p> <p>24 could to page 3, starting at the first full</p> <p>25 paragraph, and I'm going to just read to make</p>	<p>1 A. I do.</p> <p>2 Q. Do you know how your father knew</p> <p>3 Mr. Madoff, how he came to know him?</p> <p>4 A. I have a vague recollection that</p> <p>5 they met on matters that pertained to a friend</p> <p>6 in common of the two of them, who had a, some</p> <p>7 sort of a brokerage firm downtown that was what</p> <p>8 was called a member firm of the New York Stock</p> <p>9 Exchange, they were members of the New York</p> <p>10 Stock Exchange. Not a listed firm but a member</p> <p>11 firm.</p> <p>12 Q. Right.</p> <p>13 A. And this friend was a friend of</p> <p>14 theirs in common. And by this time it's</p> <p>15 possible, I just don't know for sure, when or as</p> <p>16 of when my father may have entrusted Mr. Madoff</p> <p>17 with capital to manage.</p> <p>18 Q. What do you know about that? That</p> <p>19 is, what do you know about the capital that your</p> <p>20 father gave to Madoff to manage?</p> <p>21 MR. STEINER: Objection to form.</p> <p>22 A. I don't know much at all.</p> <p>23 Q. Well, were you aware of how much</p> <p>24 he invested with Mr. Madoff?</p> <p>25 A. No.</p>
Page 147	Page 149
<p>1 sure we're in the same place. It says, "In</p> <p>2 addition, prior to investing with Mr. Madoff</p> <p>3 Mr. Merkin met with Mr. Madoff in Mr. Madoff's</p> <p>4 offices," et cetera. Do you see that paragraph?</p> <p>5 A. I do.</p> <p>6 Q. I want to ask you just a few</p> <p>7 questions about your relationship with</p> <p>8 Mr. Madoff.</p> <p>9 Do you recall when this meeting</p> <p>10 took place?</p> <p>11 A. This meeting would have taken</p> <p>12 place in the late '80s, I think, but I don't</p> <p>13 recall specifically when. This was -- this was</p> <p>14 just as we were beginning the due diligence</p> <p>15 process that we were doing with Mr. Madoff and</p> <p>16 that's roughly when that would have happened.</p> <p>17 Q. Okay. Had you met Mr. Madoff in</p> <p>18 any capacity prior to this?</p> <p>19 A. I don't think so.</p> <p>20 Q. In the immediately preceding</p> <p>21 paragraph, in fact right above the paragraph I</p> <p>22 just read from, it says that, in addition to</p> <p>23 other things, that your father, who was a</p> <p>24 successful businessman and investor, "I know</p> <p>25 Bernie, and he's okay." Do you see that?</p>	<p>1 Q. Do you know when he invested with</p> <p>2 Mr. Madoff?</p> <p>3 A. I don't know. I don't know. It</p> <p>4 may have been a number of years prior to this.</p> <p>5 If this is the late '80s, this might have been</p> <p>6 either directly or perhaps with friends, and I'm</p> <p>7 just not sure, he may have been an investor as</p> <p>8 much as a decade earlier or sometime in between</p> <p>9 and it may have been not under his name. So,</p> <p>10 that is he may have been an investor in an</p> <p>11 entity that was an investor of Mr. Madoff's. My</p> <p>12 first investment with Mr. Madoff was through</p> <p>13 something called 61M Associates, something like</p> <p>14 that.</p> <p>15 Q. Did you ever discuss with your</p> <p>16 father his investment experience with</p> <p>17 Mr. Madoff?</p> <p>18 A. My father was not a person of many</p> <p>19 words and my father was very sparing in praise</p> <p>20 and had a very constructive opinion of</p> <p>21 Mr. Madoff and his investing abilities.</p> <p>22 Q. That sounds, pardon me, like a</p> <p>23 conclusion. What I'm asking is whether or not</p> <p>24 you ever discussed the actual investment</p> <p>25 experience that your dad had with Mr. Madoff.</p>

Page 150	Page 152
<p>1 A. So when I said he was a person of 2 spare praise and few words, he spoke in 3 conclusions. So he would say I knew Bernie, I 4 know Bernie and Bernie's okay, or I know Bernie 5 and he's okay. That's what I mean. You 6 consider that is a conclusion, perhaps, but 7 that's what he said.</p> <p>8 Q. Is that the extent of the 9 conversation you and he had?</p> <p>10 A. At that particular time, that is 11 certainly the extent that I remember. This is 12 going back a while.</p> <p>13 Q. I understand.</p> <p>14 A. I don't remember -- I don't 15 remember specifics about what was bought or sold 16 or owned for that investment process.</p> <p>17 Q. Okay. Did there come a time after 18 that when you had any, any discussions with your 19 father about investing with Bernie Madoff?</p> <p>20 A. Well, my father died in 1999 and 21 so let's just say roughly ten years later, then 22 this period of time, so maybe '11, I don't know, 23 the late '80s versus the late '90s -- no, I do 24 know when my father passed away but I'm 25 saying -- so my father was 92 -- was not quite</p>	<p>1 Were you still with Gotham when you met with 2 Bernie?</p> <p>3 A. This would have been after 4 Gotham -- I don't remember. I don't remember 5 specifically, as I say, the first investment 6 was -- of mine, was at -- through 61M 7 Associates. 61M was a, call it an account or 8 call it an investment vehicle that was managed 9 out of the Scheuer family office, which had 10 possibly also migrated uptown but for many years 11 was at 61 Broadway, and then at the Empire State 12 Building.</p> <p>13 61M was an account that invested 14 money with the Madoff -- with Bernie Madoff, and 15 had a number of persons who had contributed to 16 61M for that purpose. And the person who ran 17 the Scheuer family office as an entirety and a 18 61 account was a gentleman named Leon Meyers.</p> <p>19 Q. How was it that you came to make 20 that investment in 61?</p> <p>21 A. Leon and I had developed a pattern 22 of, you know, sort of talking about managers we 23 liked or managers we thought were interesting. 24 I'm not sure that he was the first person -- 25 certainly among the very first, I don't know how</p>
Page 151	Page 153
<p>1 92 when he died, and I didn't have that many 2 further discussions that I remember with him on 3 that subject.</p> <p>4 Q. Okay. Let's go back to your 5 meeting, if I may, with Mr. Madoff.</p> <p>6 So, how was it that you came to 7 meet with him in the first place?</p> <p>8 A. I don't remember the circumstances 9 of the first meeting and I don't remember when 10 the first meeting was, exactly, and I have a 11 vague memory that I met Bernie downtown, meaning 12 he -- it may have been before he moved his 13 office uptown and I don't know when he moved his 14 office uptown. I have a vague memory that I met 15 him still when he was on Wall Street. I mean 16 that literally, that he had an office on a 17 street called Wall Street. I don't mean the 18 financial district.</p> <p>19 Q. I understand.</p> <p>20 A. It's in the financial district but 21 if there was there was one. This was the 22 beginning of our due diligence process and the 23 discussions that I remember more clearly are 24 already uptown at Third Avenue in the east 50s.</p> <p>25 Q. What were you doing at that time?</p>	<p>1 that dovetailed with my dad, but he was 2 certainly -- it was certainly -- that was 3 certainly the vehicle through which I first 4 invested, and that was just me. In other words, 5 or maybe it was the kids or something, but it 6 wasn't for the fund and it wasn't for any 7 additional limited partners.</p> <p>8 Q. Okay. I may not -- I don't think 9 I do remember this. Did you invest in 61 before 10 the meeting with Bernie or after?</p> <p>11 A. I invested in 61 I -- you know 12 what, I don't remember precisely. The answer is 13 about the same time. Ask me what took place 14 first and what took place second, I don't 15 remember.</p> <p>16 Q. All right.</p> <p>17 A. I think of both the investment 18 personally only and the meeting with Madoff, the 19 meetings with Madoff as part of the initial due 20 diligence that preceded any investments on the 21 part of the funds, and was sort of just the 22 beginning of the due diligence process.</p> <p>23 Q. So, again, returning to page 3, 24 the second line in that first full paragraph 25 says: Discuss Mr. Madoff's trading strategies</p>

Page 154	Page 156
<p>1 as well as Mr. Madoff's market making 2 activities. Let's take those one at a time. 3 What did you recall, what do you 4 recall discussing with Mr. Madoff about his 5 marketing strategies? 6 MS. ARCHER: Object to the form. 7 A. Either trading strategies or 8 market making? Which one did you -- 9 Q. Did I mess that up? I'm sorry. 10 Let me rephrase it, in light of the objection. 11 You note that you discussed with 12 Mr. Madoff trading strategies, right. It says 13 Mr. Madoff trading strategies. Can you tell me 14 what you discussed? 15 A. So you're asking about the trading 16 strategies. 17 Q. Yes, I am. 18 A. So the trading strategies were 19 what strategies did Mr. Madoff use to invest 20 money on behalf of persons who entrusted him 21 with capital. 22 Q. Right. 23 A. Which at that time would have 24 been, you know, the single stock put underneath 25 the stock and the call above the stock and not</p>	<p>1 which his customers included Charles Schwab and 2 Fidelity, I'm inadvertently repeating myself. 3 Q. Yes. 4 A. That's what he said at the time. 5 So he would have a very significant order flow 6 from, he always called them Charlie Schwabs, I 7 don't know if he was referring to the person 8 Charlie Schwab or that was just a nickname for 9 the company, and Fidelity. 10 Q. Down below, if you travel down the 11 rest of this paragraph, and I'm reading from the 12 third line from the next-to-last sentence. It 13 reads: "His firm was a very dominant market 14 maker with an extraordinary share of the trading 15 and certain NYES stocks, particularly heavy 16 traded large cap stocks." 17 A. Um-hum. 18 Q. Did that -- the fact that he did 19 that, did that have any influence in your 20 thinking of evaluating Mr. Madoff as to how that 21 might impact his trading strategies? 22 MR. STEINER: Objection to form. 23 Q. Do you understand my question? 24 A. Not exactly. 25 Q. Okay. In other words, why was it</p>
Page 155	Page 157
<p>1 the indices, and would have been perhaps, and 2 this is now guessing, maybe 30 names, maybe 3 less, maybe -- no, would have been less than 30 4 names actually at that time. And he was just 5 coming over toward the end of the period in 6 which he might want to do converts, but converts 7 had been things he had been trading, you know, 8 for a number of years prior to that. Converts 9 meaning convertible. Arbitrage meaning also a 10 strategy of long and short. Long and short 11 something that directly related to each other. 12 Q. And you also say Mr. Madoff's 13 market making activities. 14 A. Um-hum. 15 Q. What did you discuss with 16 Mr. Madoff about his market making activities? 17 A. Well, he referred to those market 18 making activities as his wholesale business in 19 which he was a wholesale broker for 20 institutional clients rather than, let's say, 21 individual clients. So they would be the 22 Fidelities and the Charles Schwabs in this 23 world. In fact, I think the next sentence, when 24 it says Mr. Madoff also explained that BLMIS 25 operated a significant wholesale business in</p>	<p>1 important, if you're investing with his trading 2 operation, why do you care about his market 3 making? 4 A. So, again, this goes to early due 5 diligence. 6 Q. Yup. 7 A. And what was involved in that 8 process, that long process. So, generally 9 establishing a reputation or examining a 10 reputation that has been established is part of 11 that due diligence process. This is as compared 12 with, say, to we talked before about GMAC. This 13 is a different due diligence process, where it's 14 not people coming over, you know, bond 15 indentures. 16 It was important to me that Madoff 17 had a sterling reputation. It was important to 18 me that he was heavily involved in the industry. 19 It certainly was of significance to me that he 20 became the chairman of NASDAQ and that his 21 brother was the governor of NASDAQ. And those 22 things were accomplished through, in part, their 23 dominant market share in the wholesale business. 24 That's what -- that's one of the things that 25 Madoff was known for.</p>

Page 158	Page 160
<p>1 The fact that trading clients such 2 as Charles Schwab and Fidelity were willing to 3 entrust them with their order flow was 4 significant to me. So all of those attributes 5 play a role. His overall stature in the 6 business, his involvement in regulatory affairs 7 for the industry, his becoming the chairman of 8 NASDAQ and a spokesman for the industry, as well 9 as NASDAQ's chairman, was significant to me in 10 terms of my initial engaging in the due 11 diligence process.</p> <p>12 The market making activity also 13 created an order flow that Madoff suggested 14 helped form views, his views of the market, and 15 since what he was doing in the trading strategy 16 was to some extent market timing on a hedged 17 basis, to a considerable extent perhaps market 18 timing on a hedged basis, the cues that he was 19 able to take from the wholesale business may 20 have been some significance in terms of -- may 21 have been of some significance to me in terms of 22 being attractive to the market making business.</p> <p>23 Q. Let's just stick with that. The 24 order flow, what information would he obtain 25 from that that could be of assistance to him in</p>	<p>1 trades for its own account partly based on what 2 they see in terms of their flows, or perhaps 3 even somewhat akin to a specialist who is both 4 making a market in a stock and also running a 5 book.</p> <p>6 That is sort of what I remember 7 today as what I might have thought at that time. 8 There may have been other things involved as 9 well but that's what I remember at the moment.</p> <p>10 Q. Just by way of example here, let's 11 say he gets an order, substantial order from 12 Schwab for a particular stock, to buy at 50. 13 Would that give him the insight that what he 14 should do is that he knows that's at least going 15 to go to 51 or 52 and therefore he should buy 16 the stock?</p> <p>17 A. I wouldn't think so. I don't 18 think he was necessarily in the business of 19 front-running his order flow. For starters, I'm 20 not sure that's legal and, secondly, you won't 21 stay in business very long front-running your 22 order flow.</p> <p>23 Let's put it this way, Charles 24 Schwab wasn't giving him an order to buy some 25 stock at 50 to then get completed at 52. Or</p>
Page 159	Page 161
<p>1 the investment advisory business?</p> <p>2 A. Would he have obtained, did you 3 say, or I?</p> <p>4 Q. Yeah, would he.</p> <p>5 A. Okay, I didn't hear you. Sorry.</p> <p>6 Q. I'm sorry, I apologize.</p> <p>7 A. You seem -- you see market 8 patterns, you begin to -- a lot of the market 9 timing business is recognizing patterns that 10 you've seen before. And so when you have enough 11 order flow and when you dominate in some big cap 12 names, the cues that Madoff took to decide this 13 was a good time to enter into what we call catch 14 a turn, were we in cash, meaning in treasuries, 15 or exit a turn and go back to treasuries, which 16 happened roughly, let's say, three to six times 17 a year or maybe even four to eight times a year. 18 "It" meaning the turns.</p> <p>19 Q. Yes.</p> <p>20 A. May well have been driven in part 21 by the long experience he had in making markets. 22 It's a little bit akin to what order flow means 23 to some of the more conventional Wall Street 24 traders. You know, say for example a very large 25 firm that has a lot of customer flow and that</p>	<p>1 they may have done it once or maybe once and a 2 half, but that's not a business plan. If you 3 understand what I'm saying.</p> <p>4 Q. No, I do understand that. That's 5 why I asked.</p> <p>6 A. So I think that's not what one 7 takes away from that. He was, I think, much 8 more interested in marrying the trade and 9 finding Charles Schwab a, in your example he 10 wanted to buy, finding Charles Schwab a seller 11 for his order out of some other part of his 12 order flow.</p> <p>13 Q. Right.</p> <p>14 A. So that's what I meant by an 15 upstairs example of the exchange. He could put 16 together the buy and the sell.</p> <p>17 Q. I understand that. We're going to 18 talk about execution and that kind of stuff in a 19 little bit. But what I'm interested in is -- 20 pardon me if I use a nonterm, but it sounds 21 like, your description of his insights into the 22 market making, sounds like he's surfing off 23 those orders to enhance his ability in the 24 investment advisory business?</p> <p>25 A. How does that sound that way?</p>

Page 174	Page 176
<p>1 volume of business he did on the wholesale side, 2 that was always of interest to me. 3 These Fidelity and Charles Schwab 4 orders are sought after. They are the staff of 5 life to people who handle their business. And 6 Madoff was, I spoke to somebody at Fidelity, 7 that's what I mean as a customer at this time, 8 and got back very positive review, all part of 9 the due diligence process. 10 I spoke to investors of his, 11 clients of his as distinct from customers. 12 Clients on the market-making side at that time, 13 who I think are some of the single most able 14 people I've met in the investment business, 15 still think so. I still think that about some 16 of these people. And, you know, they all had 17 very positive things to say. 18 Q. Do you know if Mr. Madoff paid for 19 order flow? 20 A. Pay for order flow was a subject 21 of his over a number of years. It subsided over 22 time. The whole -- I'm moving ahead in time 23 frame, so if that's not where you want to go -- 24 Q. At the time you're doing your due 25 diligence here?</p>	<p>1 A. Um-hum. 2 Q. Does Merrill Lynch clear trades? 3 A. Does Merrill Lynch clear some 4 trades? 5 Q. Yes. 6 A. I would imagine so. 7 Q. Do you have any knowledge that 8 they clear trades? 9 A. I believe they do. 10 Q. And they were cleared -- do you 11 know what the term "introducing broker" means? 12 A. Not very precisely, no. 13 Q. Do you know if introducing broker 14 clears trades? 15 A. I don't know -- the answer is I'm 16 not sure. 17 Q. When the person who clears the 18 trade -- like Merrill Lynch is clearing trades 19 for Madoff, let's assume that he was clearing 20 his trades through Merrill Lynch, right? 21 A. I don't think he did. 22 Q. No, no, but I'm asking you to 23 assume that he did. 24 A. Okay. 25 Q. You would know, would you not,</p>
Page 175	Page 177
<p>1 A. Initially. 2 Q. Yeah, initially. Did you know at 3 that time that perhaps one of the reasons he had 4 the clients he did is because he paid for order 5 flow? 6 A. I don't remember whether it came 7 up in the first meeting or two or not. I just 8 don't remember. 9 Q. Did you subsequently learn that he 10 paid for order flow? 11 A. I certainly know that payment for 12 flow was something that he said that he was open 13 to and did. I was not a wholesale customer, I 14 can't -- the way you worded the question, can I 15 confirm to you independently that he paid for 16 order flow, I cannot. I can only tell you what 17 he told me. 18 Q. When you talked to Fidelity did 19 you talk about paying for order flow? 20 A. Certainly not at that first 21 meeting. 22 Q. Did you ever talk to him about it? 23 A. Not that I recall. 24 Q. Let's go back to clearing broker 25 again.</p>	<p>1 that when you got a statement from Merrill Lynch 2 that they held a certain stock long that they 3 had that stock, would you not? 4 A. I just don't follow. You're 5 saying now that I got a, let's say a monthly 6 statement from Merrill Lynch that Bernard L. 7 Madoff had bought a hundred shares from me and 8 that was held at Merrill? 9 Q. Yes. 10 A. I just don't see the nexus to 11 Bernie. I'm missing something. 12 Q. If Bernie is using Merrill Lynch 13 to clear his trades. He's not clearing them 14 himself. 15 A. I would have known -- I would have 16 known -- had Bernie cleared our account at 17 Merrill Lynch, I would have had statements from 18 Merrill Lynch that would have reported that 19 information to me, yes. 20 Q. And would -- are there regulations 21 governing clearing brokers? 22 A. I would think yes. 23 Q. Are you familiar with them? 24 A. Not terribly well, no. 25 Q. When Bernie was clearing his own</p>

Page 178	Page 180
<p>1 trades and sending you a statement that he held</p> <p>2 a certain stock, did that mean he had the stock?</p> <p>3 A. If Bernie sent me a statement that</p> <p>4 said that we own on your behalf these shares?</p> <p>5 Q. Yes.</p> <p>6 A. Again, your behalf means the</p> <p>7 funds?</p> <p>8 Q. Right.</p> <p>9 A. So the customer was, say, Ascot,</p> <p>10 not Ezra Merkin.</p> <p>11 Q. Right.</p> <p>12 A. I did not have separately a</p> <p>13 managed account at Madoff's. My Madoff exposure</p> <p>14 was through the funds other than the 61M at the</p> <p>15 beginning.</p> <p>16 Q. Sorry, I'm speaking empirically</p> <p>17 and I shouldn't. So, if Epcot got a statement</p> <p>18 that said they held certain stocks and Bernie</p> <p>19 told you he had those, would you really know</p> <p>20 whether he had the stocks?</p> <p>21 A. Yes.</p> <p>22 Q. How would you know?</p> <p>23 A. He told me he had them.</p> <p>24 Q. Other than that, you had no</p> <p>25 information?</p>	<p>1 self-clear?</p> <p>2 A. Because it's expensive to</p> <p>3 self-clear unless you get to a certain critical</p> <p>4 mass of capital. That's why most people -- not</p> <p>5 most. Many people have moved out of the</p> <p>6 self-clearing business and because there are</p> <p>7 clear significant economies of scale in</p> <p>8 self-clearing and you can clear less expensively</p> <p>9 per trade for a very large group of customers</p> <p>10 than an individual customer may be able to do</p> <p>11 for himself.</p> <p>12 Q. Is it not true that the risk</p> <p>13 factor for self-clearing is self-dealing?</p> <p>14 A. The risk factor for self-clearing</p> <p>15 I would say is -- this goes back to what we</p> <p>16 talked about a little bit before. One of the</p> <p>17 attributes of prime brokerage is custody and</p> <p>18 clearing. So, if the firm that has custody of a</p> <p>19 hundred shares goes under, right, you have risk.</p> <p>20 You're an unsecured creditor of that firm. So</p> <p>21 you care about the credit quality of the firm</p> <p>22 that owns your -- that holds your securities for</p> <p>23 you.</p> <p>24 Q. Right.</p> <p>25 A. This was a huge issue in '08 when</p>
Page 179	Page 181
<p>1 A. I'm not sure what you're asking</p> <p>2 me. How is it different than Merrill Lynch</p> <p>3 telling me it has them?</p> <p>4 Q. Because it isn't Merrill Lynch</p> <p>5 controlled as a clearing broker as to what it</p> <p>6 has to do.</p> <p>7 A. I'm sorry?</p> <p>8 Q. As a clearing broker, does it not</p> <p>9 have to hold the stock that it's clearing for</p> <p>10 someone else?</p> <p>11 A. If Bernie self-cleared and we got</p> <p>12 a statement from Bernie that said we own this</p> <p>13 hundred shares -- I don't remember your example</p> <p>14 anymore -- and we had a statement from Merrill</p> <p>15 that said we owed -- we own, pardon me, the same</p> <p>16 hundred shares, let's just say we like the</p> <p>17 investment and we've given Merrill an order to</p> <p>18 buy a hundred shares of one of the stocks in the</p> <p>19 basket. And we have both of those monthly</p> <p>20 statements in front of us at the end of the</p> <p>21 month or in the beginning of the new month.</p> <p>22 Why -- what -- why would I see those two</p> <p>23 statements as being any different as to the</p> <p>24 ownership of those shares?</p> <p>25 Q. Well then why doesn't everybody</p>	<p>1 there was systemic risk everywhere, people</p> <p>2 worried about contra-party risk.</p> <p>3 Q. When you heard that Bernie</p> <p>4 self-cleared -- keep calling him that but we</p> <p>5 know who I'm talking about. Mr. Madoff</p> <p>6 self-cleared.</p> <p>7 A. Yeah, yeah, fine. You made that</p> <p>8 very clear from the beginning.</p> <p>9 Q. Did you do a credit analysis of</p> <p>10 Madoff's organization to give you comfort with</p> <p>11 regard to that?</p> <p>12 MR. STEINER: Objection to form.</p> <p>13 A. I think we looked into one or two</p> <p>14 things. I don't remember the specifics at the</p> <p>15 time, but whether it was then or later, but we</p> <p>16 tried to develop a sense of what his regulatory</p> <p>17 capital was in his business.</p> <p>18 Q. And what does that mean, tried to</p> <p>19 develop a sense of his regulatory capital?</p> <p>20 A. Asked them and tried to look at</p> <p>21 filings, you know, thereabout, as to that</p> <p>22 subject.</p> <p>23 Q. Did you ever ask to look at his</p> <p>24 focus reports?</p> <p>25 A. I don't remember.</p>

Page 182	Page 184
<p>1 Q. Did you ever look at his focus 2 reports?</p> <p>3 A. I don't remember. Certainly 4 discussed his focus reports. I'm not sure I 5 discussed the focus reports with him with them, 6 with the focus reports, or just discussed them 7 with him without the focus reports.</p> <p>8 Q. Did it surprise you to learn that 9 his focus reports never reported the IA 10 business?</p> <p>11 MR. STEINER: Objection to form.</p> <p>12 A. I don't know. I don't know 13 whether I knew that or not. I can't remember 14 whether I knew that or not. I think he 15 discussed them -- there's one conversation I 16 have in the back of my mind which was not then 17 which would -- which would not necessarily make 18 that a surprise. I just truly don't remember.</p> <p>19 Q. My colleague points out that you 20 keep using the term "we." I wasn't picking up 21 on that. When you say "we" with regard to this, 22 Mr. Merkin, did anybody assist you with regard 23 to this endeavor to do due diligence on Mr. 24 Madoff?</p> <p>25 A. Back there at the first meeting?</p>	<p>1 company then. It might have not had that name.</p> <p>2 Q. Maybe it was Ariel Capital Corp.?</p> <p>3 A. Might have been Ariel Capital 4 Corp.</p> <p>5 Q. My question is just that. I'm not 6 talking about other people who were investors 7 you may have talked to and other things. My 8 question when I said "we," is there anyone else 9 within your organization, like Mike Autera, who 10 did due diligence with regard to the investments 11 in Mr. Madoff?</p> <p>12 MR. STEINER: Object to the form.</p> <p>13 A. By Mike I mean Mike Autera. Mike 14 came with me to the office, to the Madoff 15 office, bringing investors to the Madoff office 16 and listening to their questions and his 17 answers, big part of the due diligence process.</p> <p>18 Q. I understand that and I appreciate 19 that testimony. My question very specific 20 was --</p> <p>21 A. You're saying not including that?</p> <p>22 Q. Yeah, not including any of them. 23 Who, if anyone, in your organization, whether it 24 was Ariel or Gabriel Capital Corp., did due 25 diligence with regard to BLMIS?</p>
Page 183	Page 185
<p>1 Q. Yeah.</p> <p>2 A. Probably at the first meeting it 3 was me, myself and Mr. Madoff. Subsequently, 4 certainly once we had made investments, Mike 5 Autera who runs my back office was on the phone 6 and participated in meetings at the Madoff 7 office and had his own phone calls with 8 certainly one of the persons in the Madoff 9 organization.</p> <p>10 And the overall due diligence 11 process goes far beyond, at least in my head, 12 goes far beyond me. The discussions with 13 investors over time, you know, the ongoing work 14 on the confirmations, the trips to his office 15 with investors, the visits there, their 16 questions of him, their questionnaires to us 17 about him, visits there in the office was part 18 of the due diligence process that makes "we" not 19 figurative, but it involves a number of 20 different people.</p> <p>21 Q. I understand that, but I was 22 talking specifically about your organization, 23 whether it's GCC, which didn't exist at that 24 point, as I understand it; is that correct?</p> <p>25 A. There was probably a management</p>	<p>1 A. The Madoff relationship in our 2 organization was heavily managed by Mike and me. 3 I'm not saying to the absolute exclusion of 4 everybody else, but it was basically Mike and 5 me.</p> <p>6 Q. Let's just go back just to that 7 last answer, the penultimate answer, actually. 8 That is, when you say you went to Mr. Madoff 9 with other investors and you talked to other 10 investors, did that -- well, let me start first 11 with the other investors. The other investors, 12 did they know anything more than you knew?</p> <p>13 A. From time to time, sure.</p> <p>14 Q. What did they know, they told you 15 that you didn't know from talking to Mr. Madoff?</p> <p>16 A. I think from time to time they had 17 insights into the process that I might have 18 learned of from them in the first instance.</p> <p>19 Q. Such as?</p> <p>20 A. Than from him.</p> <p>21 Q. Such as?</p> <p>22 A. I'm not sure. There's 23 something -- if you leave that question with me 24 I'll try to come up with something more 25 concrete.</p>

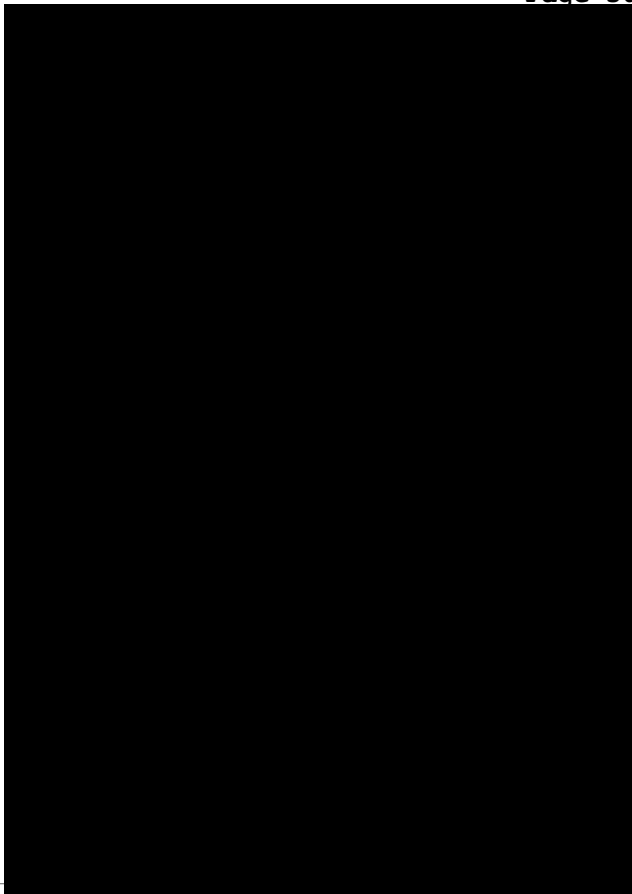
Page 186	Page 188
<p>1 Q. We'll come back to it. What I'm</p> <p>2 looking at is, by talking to others and by</p> <p>3 bringing people to talk to Madoff, was there</p> <p>4 anything different going on there than you just</p> <p>5 talking one on one with Madoff?</p> <p>6 MR. SIEV: Objection to the form.</p> <p>7 A. There might have been -- if you</p> <p>8 meet somebody for the first -- I talked to</p> <p>9 Bernie somewhere between 10 and 15 times a year.</p> <p>10 Spoke or met with him between 10 and 15 times a</p> <p>11 year for many years.</p> <p>12 Q. Right.</p> <p>13 A. I'm going to say roughly, very</p> <p>14 roughly once a month. It wasn't always every</p> <p>15 month and those 10 or 15 times were not</p> <p>16 separated by the same amount of time every</p> <p>17 week -- every conversation. But the importance</p> <p>18 of listening to Bernie present what he did to</p> <p>19 someone who met him for the first time is always</p> <p>20 helpful. Because you don't refer to things you</p> <p>21 talked about five years ago or seven years ago</p> <p>22 or last week, and it's not -- it's less</p> <p>23 conversational and it's an introduction to a</p> <p>24 fresh pair of eyes, a fresh pair of ears, a</p> <p>25 thinking head and a critical acumen, and that</p>	<p>1 had visited BLMIS's offices to conduct reviews</p> <p>2 eight times in 16 years, and that gave you</p> <p>3 additional comfort about Mr. Madoff's bona</p> <p>4 fides." Do you see that?</p> <p>5 A. I do.</p> <p>6 MR. STEINER: It wasn't exactly a</p> <p>7 correct reading, but close enough.</p> <p>8 MR. SHEEHAN: All right. I stand</p> <p>9 by the record, not by what I said, all right?</p> <p>10 Just suggesting a question.</p> <p>11 Q. But can you tell me what you</p> <p>12 discussed that gave you comfort?</p> <p>13 A. Unless I'm missing, it says -- the</p> <p>14 specific reference to the SEC reviews?</p> <p>15 Q. Yes. Did he tell you what they</p> <p>16 did?</p> <p>17 A. Oh. I thought you were saying</p> <p>18 something about the comfort.</p> <p>19 Q. No.</p> <p>20 A. He had either scheduled or</p> <p>21 surprise visits from the SEC with some</p> <p>22 regularity and some frequency, perhaps more on</p> <p>23 the regular than on the surprises. He was very</p> <p>24 proud of his overall compliance record and just</p> <p>25 sort of a clean bill of health with occasional</p>
Page 187	Page 189
<p>1 can be very, very, very additive.</p> <p>2 Q. You indicated -- I'm sorry, I'm</p> <p>3 moving around. I'm going to page 5 of this</p> <p>4 document, 354. Down in the last paragraph.</p> <p>5 A. Just one second.</p> <p>6 Q. Sure, take your time.</p> <p>7 A. Just trying to get there. Sorry.</p> <p>8 Q. It's a paragraph that starts,</p> <p>9 "Mr. Merkin also knew." And if you travel on</p> <p>10 down, you start -- you discuss the SEC. I want</p> <p>11 to be sure I don't miss something here. Sorry,</p> <p>12 I might have jumped over something.</p> <p>13 A. It's okay.</p> <p>14 Q. Boy, your memory place tricks</p> <p>15 here.</p> <p>16 A. Would you say that for the record,</p> <p>17 please.</p> <p>18 Q. I would readily admit it to the</p> <p>19 jury. Just ask Brian Williams.</p> <p>20 Let's go back to page 5 and the</p> <p>21 SEC.</p> <p>22 A. Last paragraph?</p> <p>23 Q. Yeah, last paragraph. I'm going</p> <p>24 to just read it. "In one of their many</p> <p>25 conversations, Mr. Madoff reported that the SEC</p>	<p>1 references to one or two smaller things, and it</p> <p>2 certainly meant a great deal to me that the SEC,</p> <p>3 with the power of subpoena, with the ability to</p> <p>4 spend days at the firm, which is how he</p> <p>5 presented it, came away and said, you know,</p> <p>6 thank God for Bernie. And that was very</p> <p>7 significant to me.</p> <p>8 Q. My question, though, was, maybe I</p> <p>9 wasn't clear so I'll restate it.</p> <p>10 Did he tell you what exactly the</p> <p>11 SEC did during these visits?</p> <p>12 A. Yeah. He -- his operation was</p> <p>13 reviewed by the SEC. It is my memory on the --</p> <p>14 on what I thought of as the two sort of aspects</p> <p>15 of the business.</p> <p>16 Q. What I'm asking you for is</p> <p>17 specifically, for example, did he tell you that</p> <p>18 they asked for access to DTCC to verify the fact</p> <p>19 that he had the stock he said he had?</p> <p>20 A. I don't remember that</p> <p>21 conversation.</p> <p>22 Q. Did he ever represent to you that</p> <p>23 that happened?</p> <p>24 A. I truly don't remember.</p> <p>25 Q. Okay. Page 6 if you would,</p>

Page 210	Page 212
<p>1 A. I remember the industry changing. 2 I don't remember when it was. 3 Q. Do you have an understanding of 4 the term "decimalization"? 5 A. As you used it now, I think you're 6 referring to quotation of stocks in decimals, 7 rather than in fractions. 8 Q. Right. In the old days they would 9 trade them in steenths, would you agree? 10 A. In the old old days, they'd trade 11 them in 30 seconds, but I think -- 12 Q. I'm not that old. 13 A. -- 30 seconds were reduced to 14 steenths. They were also called teenies. 15 Q. Yeah, exactly. To your knowledge, 16 to your knowledge, did the changeover to the 17 decimalization have an impact upon the market 18 making platform of Mr. Madoff? 19 A. I had conversations with 20 Mr. Madoff about the impact of decimalization. 21 I don't remember them very carefully as a topic. 22 I'm not sure it came about -- I'm not sure it 23 focused on the market making stuff. 24 The market making -- I just don't 25 remember. I don't remember such a conversation.</p>	<p>1 Q. Earlier today we were talking 2 about monitoring due diligence. My question is 3 did you ever do monitoring due diligence on 4 BLMIS, on behalf of any of your funds? 5 A. Yes. 6 Q. What did that monitoring due 7 diligence consist of? 8 A. Some of these things we have 9 talked about before the break and perhaps even 10 before then, but if one is approximately 10 or 11 15 conversations a year, conversations either in 12 person or on the phone, were meant to continue 13 to monitor and continue to perform due 14 diligence. 15 I just want to make sure he's 16 okay. Yes, he is. Are you okay? Okay, sorry. 17 I thought you had a problem. 18 Was a form of continuing due 19 diligence on the Madoff organization and the 20 organization of the Madoff function. That is, 21 we didn't just get on the boat, wave farewell 22 after we started investing. There were 23 numerous, numerous conversations. 24 Madoff's role in the affairs of 25 Yeshiva University was such that I was likely to</p>
Page 211	Page 213
<p>1 I remember conversations about decimalization, 2 but I don't remember something about the market 3 making. 4 Q. This may be drilling down too far, 5 but in any event, see if you would agree with 6 this statement. After decimalization, in order 7 to make money you had to act as an agent, not as 8 a principal, would you agree with that? 9 A. In what line of endeavor? 10 Q. In trading, market making of 11 stocks. 12 A. And before that as a principal? 13 Q. Yes. 14 A. Run it by me again, I'm sorry. 15 Q. Okay. Let me just drop it. I 16 think I'm going into an area that's just of 17 interest to me but probably doesn't mean much 18 anyway. 19 A. Okay. 20 THE VIDEOGRAPHER: Off the record, 21 3:18. 22 (Recess taken.) 23 THE VIDEOGRAPHER: We're back on, 24 3:40. 25 BY MR. SHEEHAN:</p>	<p>1 bump into him then a couple times a year for 2 that. And there was always or almost always an 3 opportunity to ask him something that I wasn't 4 sure about in terms of where the strategy -- 5 whether it had been executed properly or where 6 the strategy might be headed to next. 7 Madoff's continued and growing 8 success and prominence in the securities 9 industry was very significant. He did end up in 10 the position he achieved at NASDAQ, as its 11 chairman, and he went to Washington for hearings 12 for testimony. 13 I remember an occasion when he and 14 the president of the stock exchange and a former 15 chairman of the SEC were basically the three 16 persons who congressional committees wanted to 17 speak to. That all goes to various and 18 different forms of due diligence. 19 Continued to talk to investors, 20 continued to talk to investors of his not 21 through us, who I thought were thoughtful and 22 insightful investors, bringing investors to see 23 him was a big part of what we were after. 24 Various events that took place in 25 the securities industry mattered to me a great</p>

Page 254	Page 256
<p>1 Q. What do you understand a trading 2 authorization directive to be? 3 A. Okay. It's not -- is the prior 4 page part of this? Is that your sense of it? 5 Q. Not really, but it could -- I 6 think they're probably -- probably connected, 7 yeah, I would think so. 8 A. I'm trying to figure out what this 9 has to do, if anything -- it starts on October 10 22nd. Isn't that much earlier than the November 11 5th, the November 5th, to do things that 12 looks -- purport to do things that are very 13 Patriot Act related. 14 Q. Yup. 15 A. And maybe that's the next two 16 pages. 17 Q. Yup. 18 A. You'll notice by the unregistered 19 concept there. But I don't believe that what 20 starts -- at any rate, my sense of the trading 21 directive, which is the question I was trying -- 22 the question you asked and the question I'm 23 trying to answer, not sure has anything to do 24 with the Patriot Act or anything that precedes 25 it in this packet. I'm not sure.</p>	<p>1 this piece of paper and over the course of time, 2 the way you asked the question, yes, we had any 3 number of conversations over a sweep of years as 4 to the strategy, what it encompassed. 5 The simple move from individual 6 options to baskets makes the answer to your 7 question yes, because he certainly asked us 8 about it and we talked about it beforehand. 9 We often talked about when he was 10 gonna come in beforehand, not necessarily 11 always. You know, the overall catching of turns 12 and whether their strategy could be widened, 13 narrowed, broadened, heightened, sweetened, made 14 better, you know, the usual, the two twin 15 objectives, less risk and more reward. 16 So, yes, sure, we talked about the 17 trading strategy all the time. Not necessarily 18 in connection with this piece of paper. He and 19 I did not sit down and hammer out this piece of 20 paper together. 21 Q. When you received this piece of 22 paper -- let me rephrase that. 23 Is it your testimony then you had 24 nothing to do with the drafting of this 25 document?</p>
Page 255	Page 257
<p>1 Q. All right. Just to move it along, 2 and again Neil can point out if I leave a word 3 out, but I'll try not to. I'm going to read 4 that first paragraph. It reads: 5 "Bernard L. Madoff acting as the 6 undersigned's agent and attorney in fact has not 7 been granted, nor shall he exercise any 8 investment discretion as to the selection of 9 securities or other purchase or sold by or --" 10 did I leave it out? "-- or other property 11 purchased or sold by or for the undersigned 12 account, except with respect to the timing and 13 size of transactions and to the extent set forth 14 below. Purchase and sale of securities shall 15 further be limited to issuer --" 16 MR. STEINER: As to issuer. 17 Q. "-- as to issuer contract and in 18 quantity and shall include only executions that 19 are in accordance with the following 20 parameters." 21 A. Yes. 22 Q. With that in mind, did you and 23 Mr. Madoff sit down and decide what the 24 directives would be as to his trading strategy? 25 A. If you asked me independent of</p>	<p>1 A. As best as I remember today, I 2 don't think I had any -- I certainly didn't 3 draft it, I certainly didn't word it and 4 discussed it after -- discussed it with 5 Mr. Madoff after I received it. Meaning I 6 certainly did do the latter. I did discuss it 7 with him after I received it. 8 Q. Was it your understanding upon 9 reading this that Mr. Madoff would comply with 10 all of these directives as he managed the fund? 11 A. It was my understanding that he 12 would do so and that we had the prerogative of 13 changing it whenever we wanted. So that it 14 wasn't necessarily something that we were going 15 to be wedded to forever, nor was it presented as 16 a significant departure from what we -- what he 17 was heretofore doing for us. Maybe I should say 18 theretofore and not heretofore. 19 Q. There's one in particular I want 20 to ask about. It's one, two, three, four -- the 21 fourth bullet point. 22 A. Okay. 23 Q. Starting with the words "The 24 resulting portfolio." See that? 25 A. Yes.</p>

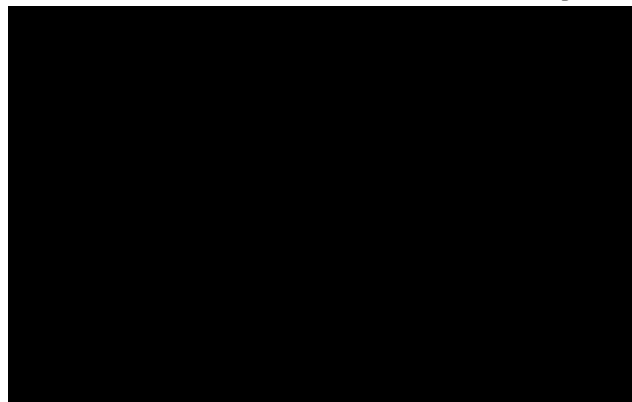
Page 306

Page 308

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 307

Page 309

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A. I think I've told you that I don't remember the specifics today of any call --

Q. Right.

A. I'm sorry, of any issues or any subjects I discussed on that call. I observed that the quotes are not used only to reflect a direct quote, as you suggested, but can also be used to frame a paraphrase, or so the parenthetical suggests, about halfway in the middle of the page.

Q. Yup.

A. That is the editor's explanation of how he uses quotes. So, you know, I don't know what he quoted and I don't know what he

1 paraphrased.

2 I think -- let's put it this way,
3 to the extent that I can make some sense of
4 this -- I don't really -- if we discussed --
5 Madoff was, was, I don't think Madoff failed to
6 answer too many questions certainly that I put
7 to him.

8 Where he would say that's -- that
9 that is a subject that he considers somewhat
10 proprietary is what you called the algorithm.
11 In other words, he wasn't that interested in
12 training people -- he used to say, I'm not that
13 interested in training people in Madoff. And by
14 that he meant to say, in the algorithm. In
15 other words, this is the thing that we do that
16 we think is proprietary, it comes out of the
17 totality of what we spend on the computer
18 systems and the order flow and it lets us judge
19 these turns. That was something that he would
20 answer and consider proprietary.

21 So I'm just guessing -- doesn't
22 even relate to this, so I don't know. I've
23 spent five minutes looking at this document, I
24 wouldn't put this at the top of the list of what
25 he got wrong. I think the top of the list is

1 crowded with other things that are just
2 factually wrong. This one I think he either --
3 just assuming that he was on the same phone
4 call. I don't know.

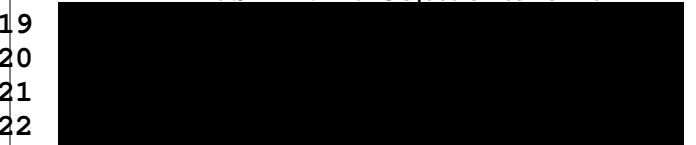
5 Q. Let me just offer that and move
6 off the document for a minute.

7 You know, did you ever have a
8 concern, from a scalability standpoint, of the
9 ability of Merkin to -- Merkin -- Mr. Madoff to
10 purchase options consistent with the strategy?

11 A. So purchase, you mean puts?

12 Q. Yeah, purchasing puts, or selling
13 calls. One or the other that, since he had to
14 do both theoretically under the split-strike,
15 that the volume of those options on either side
16 of the collar, whether that volume was available
17 to him given the size of his investments?

18 MR. STEINER: Objection to form.



23 A. Mr. Madoff and I certainly
24 discussed that over time and he certainly made
25 clear that an ever evolving higher percentage of

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re:

BERNARD L. MADOFF INVESTMENT Adv.Pro.No.
SECURITIES LLC, 08-01789 (BRL)
Debtor.

-----x

IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff
Investment Securities LLC,
Plaintiff, Adv.Pro.No.
09-1182 (BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,
L.P., ARIEL FUND LTD., ASCOT
PARTNERS, L.P., GABRIEL CAPITAL
CORPORATION,

Defendants.

-----x

CONTINUED VIDEOTAPED DEPOSITION OF
J. EZRA MERKIN, as reported by Nancy C. Bendish,
Certified Court Reporter, RMR, CRR, and Notary
Public of the State of New York, at the offices
of Baker Hostetler, 45 Rockefeller Plaza, New
York, New York, on Wednesday, February 25, 2015,
commencing at 9:42 a.m.

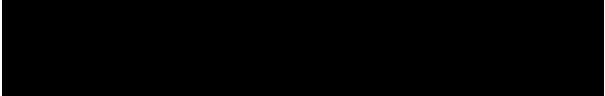
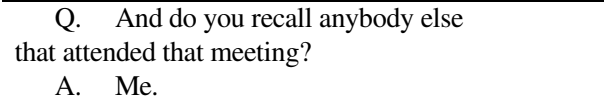
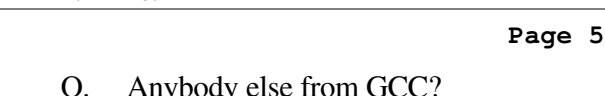
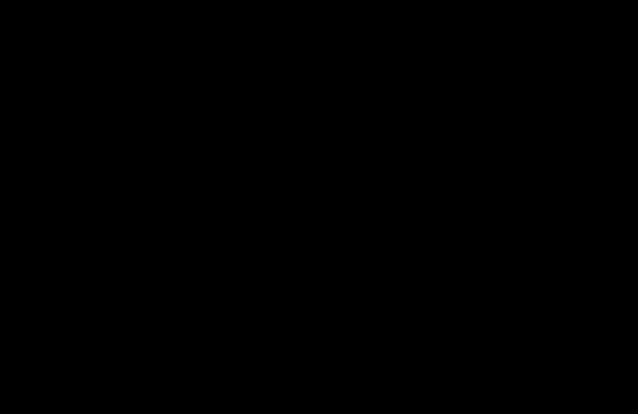
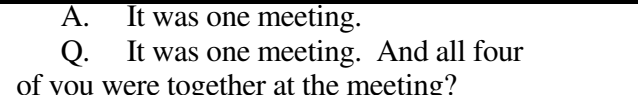
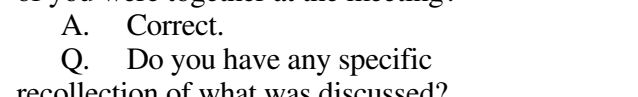
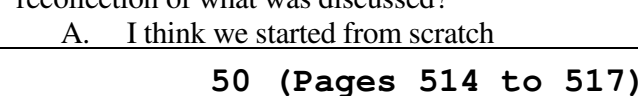


Page 386	Page 388
<p>1 It was not quite at this time, but 2 Mr. Gottesman's decision to have Mr. Madoff join 3 the university board and become the chairman of 4 their business school board, become at some 5 point the treasurer of the university, a member 6 of the executive committee, were later events, 7 some of them not that much later because that 8 takes place over a series of years, that I think 9 reflected those views.</p> <p>10 Q. Did Mr. Gottesman ever share with 11 you how much he invested in BLMIS?</p> <p>12 A. I don't remember.</p> <p>13 Q. Would the amount of money that 14 Mr. Gottesman placed with BLMIS be of any 15 significance to you?</p> <p>16 MS. ARCHER: Object to the form.</p> <p>17 A. I don't remember. At the time 18 Mr. Gottesman had -- was a very, very, very 19 significant investor in Berkshire Hathaway. 20 It's possible that even then I was aware, or I 21 believe is the case which is he was the largest 22 single individual shareholder in Berkshire other 23 than Mr. Buffett. They're institutional 24 investors, but I think at some point I realized 25 he had a larger -- perhaps was a larger investor</p>	<p>1 but not that much less well. He was a -- had 2 been a figure at the Yeshiva University board. 3 I'm not sure he was still on the board but he 4 was the chairman of their investment committee 5 at that time and I had, by then I'm pretty sure, 6 joined the investment committee. I'm not sure I 7 necessarily was then chairing it. Pardon me. 8 Can't quite place the time sequence today.</p> <p>9 He ran Solomon Brothers' municipal 10 department, municipals department which, when he 11 ran it, until -- the department was closed, was 12 sort of a huge firm within a firm. He was 13 probably one of the leading spokesmen for the 14 muni industry. The nature of the muni industry 15 is such that government relations are very 16 critical because municipals are debt securities 17 issued by government entities, perhaps without 18 exception. They don't qualify for their tax 19 advantages.</p> <p>20 What I remember from a 21 conversation with him, very specifically at that 22 time, was the extent to which the regulatory 23 world and the congressional world held 24 Mr. Madoff in such high esteem. That would have 25 been something that would have been important to</p>
Page 387	Page 389
<p>1 than anybody -- any other individual. 2 So nothing -- he was never going 3 to invest with some other person. Just for 4 sheer size, of what he might have had with 5 Berkshire and therefore what he had someplace 6 else was not something that I necessarily asked 7 about or remember hearing about or paid that 8 much attention to. Unless it was trivial, but I 9 don't have any memory that it was trivial.</p> <p>10 Q. What would be a trivial amount in 11 your mind?</p> <p>12 A. Then?</p> <p>13 MR. STEINER: Objection to form.</p> <p>14 Q. Yes.</p> <p>15 A. I don't know.</p> <p>16 Q. The next name on the list is 17 Mr. Gedale Horowitz.</p> <p>18 A. Um-hum.</p> <p>19 Q. Again, prior to 1990, did you have 20 a relationship with Mr. Horowitz?</p> <p>21 A. Yes.</p> <p>22 Q. How would you describe that 23 relationship?</p> <p>24 A. I knew him. I knew him probably a 25 little bit less well than I knew Mr. Gottesman</p>	<p>1 me and he would have been a very critical figure 2 in knowing, because he was constantly traveling 3 among states, and specifically to Congress in 4 Washington, on governmental relations, because 5 they're so important to the muni industry, and 6 because Solomon was such a dominant name in 7 municipals. And he kept saying to me -- he was 8 the person who said to me at that time, Bernie 9 Madoff, a legend on Wall Street. He said, but 10 you -- but possibly even more so, even more than 11 a legend in Congress. Given Bernie's testifying 12 down there and given the extent to which they 13 had looked to him for certain issues in the 14 securities industry.</p> <p>15 Q. Did you know whether or not 16 Mr. Horowitz had a -- any kind of a personal 17 relationship with Mr. Madoff at that point in 18 time?</p> <p>19 A. I don't really remember today 20 whether that was the case or not. I have very 21 specific memories of their knowing each other 22 subsequent to that time. In other words, I can 23 tell you about things subsequent to that, but 24 they did very clearly know each other, but I 25 don't remember today whether I knew that then or</p>

Page 402	Page 404
<p>1 A. I asked the right person the right 2 question. 3 Q. If you turn to page 3, the first 4 full sentence at the top says you had 5 conversations with customers of BLMIS's market 6 making operations. 7 A. Um-hum. 8 Q. Do you recall who those customers 9 were? 10 A. Well, Fidelity for sure. And I 11 don't remember at the moment who else it might 12 have been. There might have been somebody at 13 Charles Schwab. I just don't remember. 14 Q. Do you recall the particular 15 person you spoke to at Fidelity? 16 A. No. 17 Q. And did Fidelity send you any 18 documentation regarding BLMIS's market making 19 operations? 20 A. I don't think so. 21 Q. Do you know Henry Kaufman? 22 A. I do. 23 Q. How do you know Mr. Kaufman? 24 A. How do I know Mr. Kaufman? I know 25 Mr. Kaufman because he and his wife, for a</p>	<p>1 failed some precision test of my own. But it's 2 an older relationship, so it could have well 3 been back then as well. 4 Q. Did you discuss -- do you know 5 whether or not Mr. Kaufman had any investments, 6 either personal or through family entities, with 7 BLMIS? 8 A. I believe he did. 9 Q. And was that the subject of your 10 conversation regarding BLMIS? 11 A. It certainly came up. I mean, it 12 wasn't the only part of it, but it came up. He 13 had a gentleman who worked with him, whose name 14 I can't remember at the moment, and we had the 15 conversations in his office. 16 Q. What was the nature of those 17 conversations? 18 A. Where to invest, how to invest, 19 what kinds of returns he was looking for, what 20 kinds of risk he was willing to take, what kinds 21 of liquidity requirements he had. 22 Q. And did you have any conversations 23 with Mr. Kaufman regarding due diligence on 24 BLMIS? 25 A. I had conversations with him about</p>
Page 403	Page 405
<p>1 period of decades, were very active in something 2 that related to a school for music and culture 3 generally on the west side of Manhattan, in a 4 school that my family has had an involvement 5 with for, must be half a century or 40 years, 6 something like that. Meaning my parents, 7 myself, my siblings, my brother I think might 8 still be on the board. So I knew him a little 9 bit from there. And I knew him from going back 10 to his Solomon days a little bit. We also had 11 additional friends in common. One would have 12 been Leon Levy. 13 Q. Did you ever speak to Mr. Kaufman 14 regarding BLMIS? 15 A. Yes. 16 Q. And when were those conversations? 17 A. Can't say I remember specifically 18 when they were. 19 Q. Do you recall whether it was prior 20 to your investments in BLMIS, so prior to 1990, 21 or was it later on? 22 A. I certainly can't recall -- I 23 certainly can't recall with specific precision 24 that they were prior or else I would have 25 included them in the document. So it must have</p>	<p>1 Mr. Madoff. I can't pinpoint them and say, this 2 is what the due diligence component of it was. 3 Q. Do you have any -- do you have any 4 notes or other documentation regarding your 5 discussions with Mr. Kaufman on BLMIS? 6 A. Not that I remember. 7 Q. And do you know whether or not 8 Mr. Kaufman was ever called to testify in any of 9 the litigations, arbitrations, regarding your 10 investments in BLMIS? 11 A. I don't know. 12 Q. Do you know Norman Levy? 13 A. I think I've been introduced to 14 him once or twice. I don't know him. He -- I 15 know I had perhaps a little bit of a -- he may 16 have been a small owner of the building in which 17 our office is, and we may have been paying him, 18 directly or indirectly, some rent. 19 Q. Do you know whether Mr. Levy had 20 any investments with BLMIS? 21 A. Only from newspaper accounts that 22 appeared subsequent to late 2008. 23 Q. Did you have any discussions 24 with -- 25 A. Although, you know what, I can't</p>

Page 426	Page 428
<p>1 mother-in-law became an investor. So it was 2 ongoing conversations. 3 The Ascot investment was a, not 4 necessarily every meeting but was a fairly 5 constant motif at YU investment committee 6 meetings. I don't remember when Morris joined 7 the committee, but he was pretty diligent in 8 attendance, less diligent in attentiveness 9 because he was constantly on his phone. You 10 know, he was constantly emailing throughout the 11 meetings. But he came. Morris worked at my 12 office for a period of years and a lot of the 13 meetings were in my office. 14 So Madoff came up and Morris was a 15 fan. Morris was a fan of Ascot generally. 16 Ascot was, some of that would -- Gedale always 17 asked about, Mr. Gottesman asked about, came up, 18 conversations and so forth. Also as I've 19 previously alluded to Mr. Madoff became 20 something of a figure at Yeshiva University 21 board, chairman of the business school, officer 22 of the board when he became the treasurer, and 23 the executive committee, which was only eight or 24 nine people, included him. 25 Q. Still on page 5, if you go to the</p>	<p>1 personal nature? 2 A. I had conversations with 3 Mr. Madoff about issues that were not -- or 4 subjects that were not business. One was 5 Yeshiva University. He knew less about Yeshiva 6 perhaps than other trustees when they first 7 joined and would ask me a lot, ask me questions 8 about Yeshiva. 9 As a member of the executive 10 committee, he was entitled to a vote on who the 11 new president would be. There were only I think 12 nine such people who had a real vote. And there 13 were one or two occasions in which he 14 interviewed prospective candidates for that job 15 and asked me to join the interview. That's the 16 one or two meetings I can think of that were 17 basically not business. 18 Q. And what year did you start 19 speaking to Mr. Madoff 10 to 15 times per year? 20 A. Don't remember. Fairly early on 21 but I don't remember. 22 Q. Any recollection, starting from 23 1990? 24 A. I can't tell you that in 1990 I 25 spoke to him 13 times, and if I spoke to him</p>
Page 427	Page 429
<p>1 top of that paragraph, the first full paragraph 2 on the page where it says, as an -- 3 A. Same paragraph, right? 4 Q. Same paragraph. As an initial 5 part of his due diligence in monitoring, it says 6 that you met with Mr. Madoff 10, 15 times a year 7 by phone or in person. See that? 8 A. Approximately, yes. 9 Q. Was it your practice then to speak 10 to Mr. Madoff about once a month? 11 A. I think I said yesterday that it 12 may well have averaged once a month but I didn't 13 necessarily speak to him once a month and 14 conversations could be bunched. 15 Q. And does that 10 -- is that 10 to 16 15 times a year purely business conversations 17 that you had with Mr. Madoff? In other words, 18 discussions about the investments, about funds? 19 A. You mean with no other subjects 20 ever coming up? 21 Q. Being the primary purpose of the 22 conversation. 23 A. Yes. 24 Q. And so would you have other 25 conversations with Mr. Madoff purely on a</p>	<p>1 nine times it would have been less than 10 to 2 15. But I spoke to him regularly starting 3 fairly early on. 4 Q. And you visited Mr. Madoff in 5 person on occasion, correct? 6 A. Yes. 7 Q. And were those occasions in his 8 office? 9 A. Yes. 10 Q. How often in a year would you go 11 to visit Mr. Madoff's offices? 12 A. Don't remember exactly. Several. 13 Q. So out of the 10 to 15 times -- 14 A. A minority. 15 Q. A minority of that 10 to 15 times? 16 A. I would think so, although it 17 doesn't mean I didn't see him at -- later on I 18 would see him, we both attended certain 19 university meetings, so I would see him there. 20 Don't think we met socially very often at all. 21 So an extraordinarily high percentage of my 22 meetings with Bernie were in his office. 23 Q. And where were you -- where would 24 you physically meet with Mr. Madoff in his 25 office? When you say his office, that's kind of</p>

Page 430	Page 432
<p>1 a broad term. Where would you actually sit down</p> <p>2 and talk to him?</p> <p>3 A. In his office.</p> <p>4 Q. In his actual office?</p> <p>5 A. Well, his office, if I remember,</p> <p>6 migrated over the years that I met with him.</p> <p>7 Q. In other words, you didn't meet</p> <p>8 with him in a conference room or walking on the</p> <p>9 trading floor?</p> <p>10 A. I mean, do you want this in some</p> <p>11 detail? I mean, I met with him in his office, I</p> <p>12 met with him adjoining the -- I'll just take the</p> <p>13 examples that you brought up.</p> <p>14 So, earlier on he had an office</p> <p>15 immediately adjacent to his trading room, which</p> <p>16 was separated by glass and I think the glass</p> <p>17 could be opened but it was partitioned off. It</p> <p>18 wasn't like a wall. And I walked through the</p> <p>19 trading room with him certainly once that I can</p> <p>20 remember, maybe more than -- once, twice, maybe</p> <p>21 three times but not more than that, I don't</p> <p>22 think, and I had a series of meetings with him</p> <p>23 over the years there. His office within their</p> <p>24 complex at 85 Third moved a floor away and then</p> <p>25 I would meet with him there. And depending on</p>	<p>1 something.</p> <p>2 Peter Madoff's son died, his son</p> <p>3 Roger died in the spring of, I don't remember,</p> <p>4 and I went with somebody who very much wanted to</p> <p>5 pay a condolence call, so I joined them and saw</p> <p>6 Peter then, say within a few days after his son</p> <p>7 had died. And then I think Peter came -- so I</p> <p>8 came to these -- get the right name -- Gift of</p> <p>9 Life Foundation meetings from time to time, and</p> <p>10 Bernie was the chairman and I think Mrs. Madoff</p> <p>11 was the vice-chairman of that foundation.</p> <p>12 So I would see there, you know,</p> <p>13 some fairly sophisticated investors who were</p> <p>14 investors of Bernie who were either supporters</p> <p>15 of the foundation or on the board. Richard Joel</p> <p>16 who was the president of Yeshiva University</p> <p>17 would be there, I think Michael Jesselson was</p> <p>18 there, a son of Ludwig's, and a brother of</p> <p>19 Benjamin's. I think Fred Wilpon was there, I</p> <p>20 was there, and I think Bernie was there -- I'm</p> <p>21 sorry, Peter was there.</p> <p>22 Q. And you're referring to a specific</p> <p>23 meeting of the Gift of Life?</p> <p>24 A. (Witness nods.)</p> <p>25 Q. Was that meeting in December of</p>
Page 431	Page 433
<p>1 how many people I was bringing in to visit, if</p> <p>2 the number of people exceeded what his own</p> <p>3 office could hold, let's say comfortably, we</p> <p>4 would go a couple of doors down and sit in a</p> <p>5 conference room.</p> <p>6 So, the answer to your question I</p> <p>7 guess is all of the above.</p> <p>8 Q. Yes. Other than Mr. Madoff, did</p> <p>9 you meet with anybody else during these</p> <p>10 sessions?</p> <p>11 A. From his office?</p> <p>12 Q. From his office.</p> <p>13 A. No.</p> <p>14 Q. Mr. DiPascali -- do you know Frank</p> <p>15 DiPascali?</p> <p>16 A. No. To answer your question, I</p> <p>17 believe I met him once. He was passing by and</p> <p>18 poked his head in the door and Madoff said Frank</p> <p>19 and I said, that must be Mr. DiPascali.</p> <p>20 Q. Did you know Peter Madoff?</p> <p>21 A. I met Peter Madoff maybe once or</p> <p>22 twice. I remember in a conference room we were</p> <p>23 sitting with a number of people, he poked his</p> <p>24 head in the door and mostly wanted to ask Bernie</p> <p>25 something and all these people here or</p>	<p>1 2008?</p> <p>2 A. Yes.</p> <p>3 Q. Who did you understand -- who did</p> <p>4 you understand operated the computer algorithm</p> <p>5 that Mr. Madoff purportedly used?</p> <p>6 A. I'm not sure I -- in the sense</p> <p>7 that you mean, I'm not sure I understood that</p> <p>8 anybody in particular did. If there was such a</p> <p>9 person, I'm not sure I have a name to report to</p> <p>10 you.</p> <p>11 Q. Did Mr. Madoff ever show you how</p> <p>12 the computer algorithm worked?</p> <p>13 A. Not that I recall.</p> <p>14 Q. And did Mr. Madoff ever express to</p> <p>15 you that he had employees of BLMIS who helped</p> <p>16 either create the algorithm or monitor the</p> <p>17 algorithm?</p> <p>18 A. Mr. Madoff talked about how many</p> <p>19 employees he had, how many people worked at the</p> <p>20 organization, including the wholesale end of the</p> <p>21 business and over time that number went up. So</p> <p>22 I remember stops along the way, you know,</p> <p>23 perhaps 85 to 100 and then 200 and then 300.</p> <p>24 Talked about the computer system,</p> <p>25 didn't really tell me specifically who was</p>

Page 510	Page 512
<p>1 listen to it today. Where you can sort of hear</p> <p>2 him a little bit kind of working the con, in a</p> <p>3 way.</p> <p>4 Q. Did you do anything as a result --</p> <p>5 did you change your due diligence practices as a</p> <p>6 result of Bayou?</p> <p>7 A. I don't -- I certainly spent time</p> <p>8 talking to Madoff about issues that related to</p> <p>9 Bayou. I'm not sure that we announced a whole</p> <p>10 new revision to our due diligence procedures.</p> <p>11 MR. SONG: Now is a good point for</p> <p>12 a break.</p> <p>13 THE VIDEOGRAPHER: Off the record</p> <p>14 2:52 p.m.</p> <p>15 (Recess taken.)</p> <p>16 THE VIDEOGRAPHER: Back on 3:12.</p> <p>17 BY MR. SONG:</p> <p>18 Q. Mr. Merkin, if you could turn to</p> <p>19 Trustee's Exhibit 354 and go to page 5 of that</p> <p>20 exhibit. First full paragraph, within that</p> <p>21 first full paragraph there's a discussion of the</p> <p>22 meetings that you arranged and participated</p> <p>23 between Mr. Madoff and certain investors in the</p> <p>24 funds. Do you see that?</p> <p>25 A. Starting with the third sentence?</p>	<p>1 Q. You're not aware of a direct</p> <p>2 investment with BLMIS?</p> <p>3 A. I'm not aware of one but I would</p> <p>4 not necessarily be aware of one.</p> <p>5 Q. And what were the circumstances</p> <p>6 related to the meeting that you set up between</p> <p>7 Mr. Bravmann and Mr. Madoff?</p> <p>8 A. Don't remember.</p> <p>9 Q. Do you recall what time frame this</p> <p>10 was in?</p> <p>11 A. No.</p> <p>12 Q. Did you attend that meeting?</p> <p>13 A. I don't remember.</p> <p>14 Q. Did you have -- did you take any</p> <p>15 notes of that meeting?</p> <p>16 A. I don't remember.</p> <p>17 Q. And do you know if you have any</p> <p>18 documentation at all evidencing this meeting?</p> <p>19 A. Did we produce any, may I ask?</p> <p>20 Q. Would you have had an email, say,</p> <p>21 with Mr. Bravmann setting up the meeting?</p> <p>22 A. I might have. I don't know. I</p> <p>23 would not testify that we didn't but I don't --</p> <p>24 I don't know that that's the way it would have</p> <p>25 happened. It may have just been telephone calls</p>
Page 511	Page 513
<p>1 Q. From time to time.</p> <p>2 A. Yes.</p> <p>3 Q. We talked about Mr. Horowitz</p> <p>4 already, correct?</p> <p>5 A. Um-hum.</p> <p>6 Q. Who is Ludwig Bravmann?</p> <p>7 A. Ludwig Bravmann is a gentleman who</p> <p>8 was, I must say, very proud of the fact that he</p> <p>9 was Bernard Madoff's predecessor as treasurer of</p> <p>10 Yeshiva University, so he used to identify</p> <p>11 himself from time to time, who is now I think a</p> <p>12 vice-chairman of Yeshiva University and has been</p> <p>13 a member of the Yeshiva University investment</p> <p>14 committee certainly all the time that I sat on</p> <p>15 that committee, which is probably 18-ish plus or</p> <p>16 minus years. Has had a very long career in the</p> <p>17 securities industry going back to early Op Co</p> <p>18 days, Oppenheimer & Company days, probably in</p> <p>19 the early '50s.</p> <p>20 Q. Are you aware whether Mr. Bravmann</p> <p>21 had a BLMIS investment?</p> <p>22 A. Well, various entities that relate</p> <p>23 to him, certainly fiduciarily speaking, were</p> <p>24 limited partners in Ascot Partners LP. I don't</p> <p>25 know if he had any other.</p>	<p>1 that, for all I know, my secretary did and got</p> <p>2 the times that worked for both of them.</p> <p>3 They were -- they meaning neither</p> <p>4 Mr. Bravmann or Mr. Madoff, as best as I can</p> <p>5 remember, were very big on emails.</p> <p>6 Q. The next two names on the list</p> <p>7 here are Alec Hackel and Christof Reichmuth. Do</p> <p>8 you see those?</p> <p>9 A. I do.</p> <p>10 Q. Who is Alec Hackel?</p> <p>11 A. Alec Hackel is a, I think, German,</p> <p>12 of German origination, possibly a spot of South</p> <p>13 Africa in there as well, very senior figure in</p> <p>14 the commodities industry at Philip Brothers and</p> <p>15 at Marc Rich & Company, who was based, in</p> <p>16 relevant times, in Zug, Switzerland or in</p> <p>17 Meggen, Switzerland and was, I think, the</p> <p>18 chairman of the board, but certainly the senior</p> <p>19 figure from the point of view of the</p> <p>20 capitalization of a money management operation,</p> <p>21 later licensed Swiss bank, called Reichmuth &</p> <p>22 Company that had been started by Christof</p> <p>23 Reichmuth's father Carl.</p> <p>24 And perhaps to save you some</p> <p>25 questions, at which Patrick Erne, which is the</p>

Page 514	Page 516
<p>1 name after Christof Reichmuth, so to take those 2 three names together rather than two names 3 together... 4 Q. Sure. 5 A. ...worked. 6 Q. Did there come a time when you set 7 up a meeting between Mr. Reichmuth, Mr. Hackel 8 and Mr. Madoff? 9 A. I set up meetings for Mr. Hackel, 10 I set up meetings for Mr. Reichmuth, I set up 11 meetings for Mr. Erne. I don't know at which 12 meetings the two of them might have overlapped. 13 Q. Did -- I want to start with 14 Mr. Reichmuth. Do you recall when you set up 15 the meeting for Mr. Reichmuth? 16 A. Christof? 17 Q. Yes. 18 A. This would have probably been not 19 that long after Reichmuth & Company was started 20 by his father. So early in the period we're 21 talking about, but I don't remember when. 22 Q. Does the late 1990s sound correct 23 to you? 24 A. That's early in the period we're 25 talking about, so I can't remember exactly when.</p>	<p>1 Fund? 2 A. No. 3 Q. Do you recall how many meetings 4 you set up between Mr. Reichmuth and Mr. Madoff? 5 Mr. Christof Reichmuth. 6 A. No. 7 Q. Was it more than one? 8 A. Could very well be. 9 Q. Did you ever disclose to 10 Mr. Christof Reichmuth that Ariel had capital 11 invested with BLMIS? 12 A. To Christof specifically? 13 Q. Yes. 14 A. I don't remember a specific 15 conversation with Christof. 16 Q. Okay. Do you recall setting up a 17 meeting for Mr. Patrick Erne and Mr. Madoff in 18 October of 2007? 19 A. Sounds right. 20  21  22  23 Q. And do you recall anybody else 24 that attended that meeting? 25 A. Me.</p>
Page 515	Page 517
<p>1 I would have conjectured 2000 but, you know, 2 it's not a different -- not a completely 3 different answer. 4 Q. Do you recall attending the 5 meeting with Mr. Reichmuth and Mr. Madoff? 6 A. I recall attending meetings at 7 Mr. Madoff's office with various members of the 8 Reichmuth staff. I'm not sure I remember this 9 one specifically. 10 Q. Okay. Do you recall what the 11 purposes were of the -- do you recall what the 12 purposes of the meeting between Mr. Reichmuth 13 and Mr. Madoff were? 14 A. Broadly speaking, Reichmuth & 15 Company had money management clients, of which 16 possibly Mr. Hackel was one and then had a whole 17 series of clients who I didn't know, and they 18 had -- over a period of time were in the process 19 of setting up at least one and probably two what 20 became fairly large fund of funds. 21 In the first one, chronologically, 22 they had a very large position relative to the 23 size of the fund in Ascot Fund Limited. 24 Q. Did you ever tell Mr. Reichmuth 25 that BLMIS only acted as a broker for Ascot</p>	<p>1 Q. Anybody else from GCC? 2 A. Don't think so. I don't remember, 3 but -- not that I remember. 4 Q. Why was this meeting arranged? 5 A. I'm sorry? 6 Q. Why was the meeting arranged? 7  8  9  10  11  12  13 14 15 16 17 18 19 A. It was one meeting. 20 Q. It was one meeting. And all four 21 of you were together at the meeting? 22 A. Correct. 23 Q. Do you have any specific 24 recollection of what was discussed? 25 A. I think we started from scratch</p>